

RIVER ISLANDS  
  
A T L A T H R O P

RECEIVED  
DELTA COUNCIL  
MAILROOM

2012 AUG 10 PM 1:17

August 8, 2012

Ms. Cindy Messer  
Acting Deputy Director, Delta Plan  
980 Ninth Street, Suite 1500  
Sacramento, CA 95814

RE: Meeting with City of Lathrop August 3, 2012 – Appeal process

Dear Cindy:

Thank you, Dan, and Jessica again for meeting with us and the City of Lathrop last Friday regarding the Delta Plan and the River Islands project. During the meeting, we discussed at length the appeal process. Dan Ray clarified that only consistency determinations were subject to appeal to the Delta Stewardship Council ("Council") but that it was up to the local agencies to determine whether a project should be considered a covered action. He further clarified that projects which are exempt from covered actions would not be subject to a consistency determination.

In your letter to me dated July 27, 2012 you include a statement that says "A key feature of the Act's consistency certification process is that the determination of whether a project is a covered action (which necessitates the filing of a certification of consistency is made by the local agency that approves, funds, or carries out the project, rather than the Delta Stewardship Council."

The purpose of my letter today is to clarify your July 27<sup>th</sup> language. Based on our discussion on August 3<sup>rd</sup>, I now understand that the language from the July 27<sup>th</sup> letter means that once the local agency makes its determination that a program, project, or activity is a "covered action", then the "covered action" necessitates the filing of a certification of consistency. Alternatively, as we discussed, programs, projects and activities that a local agency determines are exempt and not a "covered action" are not subject to the consistency determination. This understanding is also consistent with the letters that were sent out in October of last year to other projects on this subject. As you may recall, those 2011 letters state that a local agency must make a consistency determination for a covered project, but they do not require that exempt projects undergo a consistency determination. I have included a copy of the letter that was sent to Mountain House for your review.

Additionally, the original 2009 legislation discusses consistency determinations only with respect to covered actions. As you can see by the following language, appeals are only applicable to projects which are considered to be covered actions. The legislation supports the discussion we had on Friday.

85225. A state or local public agency that proposes to undertake a covered action, prior to implementation of that covered action, shall prepare a written certification of consistency with detailed findings as to whether the covered action is consistent with the Delta Plan.....Any person who claims that a proposed covered action is inconsistent with the Delta Plan.....may file an appeal to a certification of consistency submitted to the council."



THE CAMBAY GROUP, INC.

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person who claims that a proposed covered action is inconsistent with the Delta Plan.....may file an appeal to a certification of consistency submitted to the council.”

Thank you again for meeting with us and clarifying the local agency's determination and Council appeal process.

Sincerely,



Susan E. M. Dell'Osso  
Project Director

cc: Dan Ray  
Jared Ficker  
Anthony Barkett  
Steve Salvatore  
Glenn Gebhardt  
Ramon Batista



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## DELTA STEWARDSHIP COUNCIL

October 11, 2011

Ms. Corinne King  
San Joaquin County Community Development Department  
1810 E. Hazelton Ave  
Stockton, CA 95205

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RE: Initial Study for Neighborhoods K and L at Mountain House, SCH# 2011092041

Dear Ms. King:

The Delta Stewardship Council is an independent state agency charged with adopting and implementing a legally-enforceable, integrated resources management plan for the Sacramento-San Joaquin Delta, referred to as the "Delta Plan" (see generally, the Sacramento-San Joaquin Delta Reform Act of 2009, Div.35 of the California Water Code). Once the Delta Plan becomes effective as a state regulation (anticipated in Spring 2012), state and local agencies that propose to carry out, approve or fund "covered actions" must first prepare and file with the Council written certifications that those actions are consistent with the Delta Plan. Those certifications are subject to appeal, and a project may not proceed until it is consistent with the Delta Plan.

Council staff recently reviewed the Initial Study for Neighborhoods K and L at Mountain House. It appears that the project would likely meet the definition of a "covered action", and would be subject to the Delta Plan, if the Delta Plan becomes effective prior to the filing of a notice of approval or determination for your project. As such we would encourage you to consult with us to ensure the project's consistency with the Delta Plan and the coequal goals.

What is a covered action? It is "a plan, program, or project as defined by §21065 of the PRC that meets the following conditions: 1) will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh; 2) will be carried out, approved, or funded by the state or a local public agency; 3) is covered by one or more provisions of the Delta Plan; 4) will have a significant impact on achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and state interests in the Delta." (CA Water Code §85057.5)

What are the coequal goals? "Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural,

*"Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place."*

*- CA Water Code §85054*

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recreational, and natural resource, and agricultural values of the Delta as an evolving place." (CA Water Code §85054) The Delta Reform Act of 2009 created the DSC and charged it with developing a Delta Plan to achieve the coequal goals.

If you have any questions or would like to set up an initial consultation, please contact me at (916) 455-5011 or [ksamsam@deltacouncil.ca.gov](mailto:ksamsam@deltacouncil.ca.gov).

Sincerely,



Kevan Samsam, P.E.  
Delta Stewardship Council

cc: DSC Chron File